

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
LUFKIN DIVISION

ROOSEVELT BARNES	§	
v.	§	CIVIL ACTION NO. 9:09cv68
DIRECTOR, TDCJ-CID	§	

MEMORANDUM ADOPTING REPORT AND RECOMMENDATION
OF THE UNITED STATES MAGISTRATE JUDGE
ON PETITIONER'S MOTION FOR RELIEF FROM JUDGMENT

The Petitioner Roosevelt Barnes, proceeding *pro se*, filed this application for the writ of habeas corpus under 28 U.S.C. §2254 complaining of the computation of his sentence. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Barnes complained that he had not received sufficient time credits on his sentence. He said that he was originally indicted under cause no 17,646, but was not convicted under this cause number; instead, he was re-indicted under cause no. 17,789, which is the number under which he was ultimately convicted and sentenced. Barnes complained that he did not receive any credit for the time which he served under cause no. 17,646 before that case was dismissed.

After review of the pleadings, the Magistrate Judge issued a Report recommending that the petition be dismissed as successive. The Magistrate Judge observed that Barnes had previously filed a petition challenging his conviction in cause no. 17,789, and he did not show that he had received permission from the Fifth Circuit to file a successive petition. Barnes did not file objections to the Report, and the petition was dismissed on September 22, 2009.

On February 16, 2010, Barnes filed a motion for relief from judgment under Rule 60(b), Fed. R. Civ. P. In this motion, Barnes argued that his petition was not successive because he was

challenging the denial of time credits in cause no. 17,646, whereas his prior habeas petition challenged cause no. 17,789. After review of Barnes' motion, the Magistrate Judge issued a Report recommending that Barnes' motion for relief from judgment be denied. The Magistrate Judge stated that because Barnes was not convicted in cause no. 17,646, he could not challenge that case through habeas corpus. Instead, any time credits to which Barnes was entitled would have been applied to cause no. 17,789. Because Barnes challenged that case through a prior federal habeas corpus petition, the Magistrate Judge stated that he could have challenged the time credits which he received in that prior petition, rendering the present one successive. Thus, the Magistrate Judge concluded that Barnes' motion for reconsideration lacked merit.

Barnes did not file objections to the Report of the Magistrate Judge; accordingly, he is barred from *de novo* review by the district judge of those findings, conclusions, and recommendations and, except upon grounds of plain error, from appellate review of the unobjected-to factual findings and legal conclusions accepted and adopted by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause as well as the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 14) is ADOPTED as the opinion of the District Court. It is further

ORDERED that the Petitioner's motion for relief from judgment (docket no. 13) be and hereby is DENIED.

So **ORDERED** and **SIGNED** this **10** day of **September, 2010**.



Ron Clark, United States District Judge